

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Sherry Henry-Howard

Plaintiff,

v.

Case No. 07-13774

Commissioner of Social Security,

Honorable Sean F. Cox

Defendant.

_____ /

OPINION & ORDER
ACCEPTING AND ADOPTING REPORT & RECOMMENDATION

This social security appeal is before the Court for consideration of Plaintiff's objections to a Report and Recommendation ("R&R") filed by Magistrate Judge Virginia Morgan on June 19, 2008, relating to the parties' cross-motions for summary judgment. In the R&R, Magistrate Judge Morgan recommends that the Commissioner's motion be granted, that the Plaintiff's motion be denied, and that the decision denying benefits be affirmed. For the reasons that follow, the Court overrules the objections filed by Plaintiff and shall adopt the R&R.

BACKGROUND

Plaintiff Sherry Henry-Howard brought this action under 42 U.S.C. §405(g) seeking review of the denial of her application for Social Security benefits. Thereafter, both parties filed cross-motions for summary judgment, which were referred to Magistrate Judge Morgan pursuant to 28 U.S.C. §636(b)(1)(B) & (C).

On June 19, 2008, Magistrate Judge Morgan issued her "corrected"¹ R&R which

¹Magistrate Judge Morgan's original R&R was also issued on June 19, 2008. The corrected R&R simply corrects a formatting issue.

recommends that Plaintiff's Motion for Summary Judgment be denied. It further recommends that Defendant's Motion for Summary Judgment be granted.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within ten (10) days after being served with a copy of the R&R. "The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made." *Id.*

Plaintiff filed objections to the R&R on June 26, 2008. Defendant filed a Response to the Objections on July 10, 2008.

ANALYSIS

In evaluating Plaintiff's objections, this Court's scope of review is limited to determining whether the Secretary's decision is supported by substantial evidence. *Morgan v. Secretary of Health & Human Svs.*, 664 F.Supp. 273, 274-75 (6th Cir. 1986); 42 U.S.C. § 405(g).

"Substantial evidence" has been defined as such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* "Thus, a reviewing court must evaluate the record as a whole and uphold the Secretary's decision if it is supported by substantial evidence, even though the court might have reached a different result were it deciding the case *de novo*." *Id.*

In her objections to Magistrate Judge Morgan's R&R, Plaintiff asserts that the decision of the ALJ is not supported by substantial evidence. Specifically, Plaintiff objects that "the ALJ failed to properly assess the Plaintiff's credibility about the intensity and persistence of her pain and her need to lie down for relief during the day."

It is well established, however, that an "ALJ is entitled to great deference when a

claimant is allegedly impaired by pain.” *Morgan, supra*, at 275; *Beavers v. Secretary of Health & Human Svs.*, 577 F.2d 383 (6th Cir. 1978). “The opportunity to observe the demeanor of a witness, evaluating what is said in light of how it is said, and considering how it fits with the rest of the evidence gathered before the person who is conducting the hearing, is invaluable and should not be disregarded lightly.” *Beavers, supra*.

Having reviewed the record in this case, and the ALJ’s decision, this Court concludes that the ALJ’s assessment of Plaintiff’s credibility is supported by substantial evidence. The ALJ provided a detailed analysis of Plaintiff’s subjective complaints about pain and his reasons for concluding that Plaintiff’s claims were not credible, and discussed the record evidence supporting that conclusion. (*See* A.R. at 21-25). For example, as noted by the ALJ, Dr. Rengachary – one of Plaintiff’s own treating physicians – described Plaintiff’s complaints of pain as “bizarre.” (*See* A.R. at 24 & 278). Dr. Rengachary also noted that Plaintiff “insists on using a walker, although she does not have any significant motor deficit.” He further stated: “At this time, she has maintained that she wants to go on disability. I am very concerned that she is doing all the maneuvers necessary to go on disability.” (*Id.*).

The Court concludes that the above evidence, and the other evidence on this issue cited by the ALJ, constitutes substantial evidence supporting the ALJ’s conclusion as to Plaintiff’s credibility. *See Atterberry v. Secretary of Health & Human Svs.*, 871 F.2d 567, 571 (6th Cir. 1989)(“The ALJ very ably considered the medical record in *toto* in evaluating the claimant’s subjective complaints of pain and work limitations.”). The Court therefore finds Plaintiff’s objections to Magistrate Judge Morgan’s R&R to be without merit and shall accept the R&R.

CONCLUSION & ORDER

Accordingly, the Court **ACCEPTS** and **ADOPTS** Magistrate Judge Morgan's R&R. **IT IS ORDERED** that Plaintiff's Motion for Summary Judgment is **DENIED** and Defendant's Motion for Summary Judgment is **GRANTED. IT IS FURTHER ORDERED** that Plaintiff's Complaint be **DISMISSED WITH PREJUDICE**.

Dated: September 15, 2008

S/ Sean F. Cox
Sean F. Cox
United States District Court Judge

PROOF OF SERVICE

The undersigned certifies that the foregoing order was served upon counsel of record via the Court's ECF System and/or U. S. Mail on September 15, 2008.

s/Jennifer Hernandez
Case Manager to
District Judge Sean F. Cox